



EMBASSY OF THE
UNITED STATES OF AMERICA
Brasilia, D.F.

Brazil

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December 30, 1976

The Honorable
Harry H. Shlaudeman
Assistant Secretary for
Inter-American Affairs (ARA)
Department of State
Washington, D. C.

Dear Harry:

In my December 21 letter, in response to your letter of November 1, I furnished my views on the specific proposal to approach the GOB on human rights in terms of the Harkins Amendment. This letter addresses the broader human rights questions raised in the same letter.

To my thinking, a practical and reasonable working definition for a "consistent pattern of gross violations of internationally recognized human rights" would be along the following lines. "Gross violations," that is to say, flagrant and extreme violations of human rights, would be, in the minds of most persons, I believe, those that seriously violate the person, that is, those acts which infringe upon the human being's fundamental dignity, personal security and physical integrity. The language of 502 itself here is the best guide to what was Congress' main concern. This sort of violation most often takes the form of government-sponsored or condoned murder, torture, brutality, arbitrary and incommunicado detention, or prolonged detention without trial or detention under inhuman conditions. Also included would be acts of physical violence or harrassment provoked, condoned or acquiesced in by the government against persons or private institutions. Viewed in these terms, "gross violations" would not normally include the denial of

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of many of the basic political rights cherished by western liberal societies, such as freedom of assembly, opinion and association and such rights as the right to vote, strike or petition for redress. While I am aware that those political rights also are affirmed in the Universal Declaration, I believe that the essence of our particular problem is to deal with the most blatant excesses and outrages against human security and dignity that are so shocking to the conscience of many Americans. In reality, there are distressingly few countries in the world which are not, in one sense or another, or at one time or another, guilty of serious violations of "political" rights. I am not at all sure that we can be effective in "taking on" the great majority of the world's governments.

In my judgment whether the pattern is "consistent" is determined by the degree to which a government, by direction, condonation or open acquiescence at the highest policy levels, uses such tactics regularly over a period of time as an instrument of policy to coerce dissenters and substantially denies all avenues of legal remedy against such acts. To determine whether a pattern is "consistent" sooner or later involves a judgment as to just what are the precise intentions of the government at the highest policy level. We have seen here that a process of consistent human rights violations can go forward by a momentum and a logic of its own, virtually immune for a time to a government's sincere efforts to bring it under control. In such circumstances, if it can be established that the government is opposed to such violations in principle and in fact has given substance to this opposition by concrete countermeasures -- even when some or most of these countermeasures are not publicly announced or acknowledged -- then it is legitimate to state that there is no "consistent" pattern even though those countermeasures have not successfully curbed all violations.

An important element is the trend or direction of government policy. We must recognize that the process

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of imposing high standards of human rights from the top can hardly produce rapid or dramatic results where lines of communication and control are weak or unclear, and personnel at the lowest levels are dismally trained and motivated. (President Geisel acknowledged that these were factors that defied efforts to curb police brutalities.)

In the case of Brazil, there continue to be some violations of internationally recognized human rights, and some of the violations are serious. But I believe that these violations, by the above criteria, do not constitute a "consistent pattern." President Geisel's intentions to eliminate the most outrageous forms of violation of the person are clear, and the measures he has taken have produced significant results in the number and nature of incidents, at least since January 1976. As noted in the Embassy's human rights reporting, our sources, many of them anti-government, are virtually unanimous in commenting that the practice of torturing political prisoners dropped off dramatically following the removal of the Second Army Commander because of the death of a political prisoner under his jurisdiction. On the other hand, instances of severe brutality on the part of local police units against "marginals" and others continue to be reported frequently in the press. It would be hard, however, to argue that there was no consistent pattern of gross violations during much of the Medici period when these appeared to be condonation at the top, of the excesses of the security services, or during the first year and a half of the Geisel administration, when the government's efforts to curb violations were uncertain and, in some respects, tentative.

I sense that the concern of Congress, and probably the underlying concern of the American public, is with the violations of the human rights of those accused of "victimless" political crimes of opinion, expression, association and assembly. I suspect that there is less awareness of, and interest in, violations of the basic human rights of persons accused of common crimes or who

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are the humble victims of police brutality (e.g. by "death squads") and arbitrariness or blatant official neglect and indifference.

Turning to your question about positive inducements for change in human rights problem countries, I would first note that much of our effort here has been to give what support and encouragement we could to what you might call "a human rights coalition." The human rights lobby here consists principally of the moderate and liberal leadership of the opposition MDB, a relatively small number of independent-minded government party (ARENA) leaders, the Catholic Church and some of its lay organizations, and professional groups such as the Bar Association, Press Association, and Journalist Unions. We believe that we have been successful with the limited tools available to us, such as regular personal contact, international visitor grants, and public affairs programs, in showing U.S. support for these organizations and in identifying ourselves with the principles they stand for. We have reason to believe that they welcome these un-publicized signs of our support and derive encouragement from them; in addition, they probably feel that this link gives them an added measure of protection against security forces recriminations.

Though it may seem anomalous, another positive force here for better human rights standards is the Supreme Military Tribunal. During the past few years several of the Tribunal's prestigious senior military members have openly questioned exceptional legislation such as the National Security Act and spoken out in favor of a return to constitutionality. In its decisions, the Tribunal has shown considerable independence and more than customary concern for due process and individual rights. We have not sought close contacts with the Supreme Military Tribunal as an institution because it has not seemed entirely appropriate, given its judicial function. We could re-examine our attitudes and look seriously at the possibility of more careful Embassy cultivation of the more senior liberal military members of the Tribunal, both as

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positive spokesman for human rights as well as vectors of humane, liberal influences within the Armed Forces. For example, an invitation to key members to visit the U.S. could be seen as signaling U.S. approval of the liberal human rights lines they are pursuing, while at the same time providing another channel for our views on human rights to important segments of the Brazilian military and Brazil's executive leadership. I recognize, of course, that such visits would have to be carefully formulated and justified to avoid the appearance of a U.S. acceptance of the practice of military jurisdiction over civilian political offenders. My basic concern, however, is that too obvious Embassy cultivation of the forward-looking members of the STM could embarrass or even compromise their independent efforts.

I fully agree with you that we must seek positive inducements for change in human rights problem countries, but when I review the possible incentives we may be able to offer, and when I review the array of the tools available to us, I am hard pressed to find effective inducements of a positive kind. As you know, there are three basic things that the GOB wants from us: improved access to the U.S. market; continued, and if possible increased, investment and financing from the U.S. private sector; and acquiescence in the GOB-FRG nuclear agreement. I am most skeptical that the USG either could or would provide concessions (inducements) in these areas in return for improved Brazilian performance on human rights, that is, for ceasing to do what they should not have been doing in the first place. There is some small potential profit in patting the Brazilians on the back publicly when -- as recently -- they improve their performance significantly, but the limiting factors here are the occasional lapses which make the picture less than perfect and the possibility of a major regression which would produce a "consistent pattern" and which would clearly have to be referred to as publicly as the improvements had been.

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In this general vein, I continue to believe that real and lasting progress in Brazil in the human rights area will be most readily achieved only if the Brazilian military are brought around. While I am fully aware of the sensitivity of the subject, and the discomfort of our own senior military officers in dealing with it, I believe we must do more to inject the human rights angle in our military-to-military contacts in the hemisphere. We should, for example, at some point during the visit of each senior Brazilian military officer to the U.S. -- visits which occur with some frequency -- bring home the point that preservation of a high human rights standard remains a primordial concern in American public opinion and consequently in the Congress and that lasting and effective defense cooperation will become steadily more difficult if these concerns are not recognized.

A positive point that might be made, perhaps in connection with the proposed visit of Brazilian CNO Admiral Espellet, is that the \$50 million FMS credit approved by Congress for Brazil is by far the largest granted to any Latin American country and more than meets Brazil's credit needs in the U.S. for fiscal 1977. (We assume the amount could have been even higher if the Brazilians had been in a position to use more credit.) Such Congressional response was in part possible only because Brazil had showed some progress in curbing human rights abuses. But it could be stressed that Congress in the future will expect even higher standards of our Latin American defense partners in deciding whether and how much such credit to vote in upcoming years. The force of this argument should, however, not be over-stressed; the signs are that FMSCR is not so interesting or important to the Brazilians as it once was.

Other military channels for the presentation of our human rights concerns could be the Inter-American Defense College where we provide American lecturers or have American officers on the staff, the Inter-American Defense Board, such hemispheric forums as the Inter-American Naval Conference and the Conference of the

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American Armies, and class visits of Latin American war colleges to the U.S.

As I have long insisted, these Washington-based actions are indispensable to give credence, support and endorsement to our own local efforts here. And the higher-level the Washington effort, the better. By the same token, every time an opportunity to raise the human rights question at very high levels, either in Washington or during visits to Brazil, is not taken advantage of, our efforts are undercut.

On the "multilateralization" aspect, it has occurred to me that the Common Market as a group and its major members are now in a position to apply as much or more leverage on Brazil on the human rights issue than we are, since Brazil is seeking better rapport with them in its overall effort to diversify its trade and technology ties away from the U.S. and toward other major industrial countries. Our information is that human rights in Brazil is viewed as an internal political issue in most of the Common Market countries. Brazil needs the Common Market and thus clearly needs the major members, the FRG, the UK, France, and to a lesser extent, the Netherlands. The Europeans, it seems, could, without great loss, play on this need by making the point that lasting cooperation must be based on shared respect of basic human values. I would certainly recommend that the Department at least consider informal consultations with our European friends about the use of their growing influence in favor of higher human rights standards.

Finally, I strongly agree that the Inter-American Human Rights Commission should be strengthened and given a broader mandate though, I must admit to a lack of clear ideas as to how, or even whether, this could be done in the present atmosphere of drift within the OAS. We might consider the possibility of some modification of Harkins in the sense of creating linkage between the IAHRC, for example, and the decision-making process

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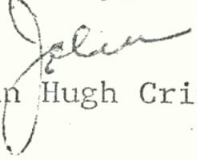
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in the Inter-American Development Bank, starting with the proposal that there should be a deferral in the approval of loans to any country for whom the IAHRC has found a presumption of "gross or consistent" human rights violations until the country in question has agreed to accept an in-country investigation under IAHRC procedures.

We will certainly continue to think about these very complex questions, hoping that you and involved Department organizations will keep us informed of the results of the search for new initiatives at that end.

Sincerely,


John Hugh Crimmings

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